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Ad Hoc Committee for the Negotiation of a Convention against Corruption
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Item 3 of the provisional agenda*
Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 40-50 and chapters IV-VIII

Revised draft United Nations Convention against Corruption**

[*Preamble was not taken up during the first session of the Ad Hoc Committee*]

Preamble[1]

[*The General Assembly*], [*The States Parties to this Convention*],

Concerned about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further that cases of corruption, especially on a large scale, tend to involve vast quantities of funds, which constitute a substantial proportion of the resources of the countries affected, and that their diversion causes great damage to the political stability and economic and social development of those countries,

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* A/AC.261/5.

** The present document contains the draft text as revised following the first reading of the draft convention, which the Ad Hoc Committee began at its first session.

[1] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14). On the recommendation of its Chairman, the Ad Hoc Committee at its first session decided that it would consider the preamble at the end of the negotiation process, possibly together with the final clauses of the draft convention.

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Convinced that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples,

Convinced also that, since corruption is a phenomenon that currently crosses national borders and affects all societies and economies, international cooperation to prevent and control it is essential,

Convinced further of the need to provide, upon request, technical assistance designed to improve public management systems and to enhance accountability and transparency,

Considering that globalization of the world's economies has led to a situation where corruption is no longer a local matter but a transnational phenomenon,

Bearing in mind that the eradication of corruption is a responsibility of States and that they must cooperate with one another if their efforts in this area are to be effective,

Bearing also in mind ethical principles, such as, inter alia, the general objective of good governance, the principles of fairness and equality before the law, the need for transparency in the management of public affairs and the need to safeguard integrity,

Commending the work of the Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in combating corruption and bribery,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the Council of Europe, the European Union, the Organisation for Economic Cooperation and Development and the Organization of American States,

Welcoming multilateral initiatives to combat corruption, including, inter alia, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1977,[2] the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,[3] the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,[4] the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, adopted by the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in Dakar from 21 to 23 July 1997,[5] the Manila Declaration on the Prevention and Control of Transnational Crime, adopted by the Asian Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held in

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[2] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[3] See E/1996/99.

[4] *Official Journal of the European Communities*, C 195, 25 June 1997.

[5] E/CN.15/1998/6/Add.1, chap. I.

Manila from 23 to 25 March 1998,[6] the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,[7] and the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 9 September 1999,[8, 9]

[*Adopts* the United Nations Convention against Corruption, annexed to the present resolution.]

[*Have agreed as follows*:]

I. General provisions

Article 1
Statement of purpose[10]

The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat more effectively corruption and [criminal] [all other][11] acts related specifically to corruption;

(b) To promote, facilitate and support international[12] cooperation in the fight against corruption, including the return of the proceeds of corruption [to their countries of origin];[13]

[(c) To promote integrity and good governance.][14]

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[6] E/CN.15/1998/6/Add.2, chap. I.

[7] Council of Europe, *European Treaty Series*, No. 173.

[8] Ibid., No. 174.

[9] See General Assembly resolutions 51/59 and 53/176.

[10] This article was revised at the first session of the Ad Hoc Committee. One delegation proposed that this article be entitled "Purposes of the Convention".

[11] In carrying out its first reading of the draft text, the Ad Hoc Committee at its first session considered it necessary to retain these two formulations pending a determination of the nature of the convention, which would be possible only after consideration of several substantive provisions of the draft text. Ukraine proposed the formulation "criminal acts and other offences related specifically to corruption" (A/AC.261/L.5).

[12] At the first session of the Ad Hoc Committee, one delegation expressed the view that this formulation should be expanded to include cooperation through international and regional organizations.

[13] During the first reading of the draft text, many delegations expressed the view that the statement of purpose would not be complete without the inclusion of the issue of transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and the return of such funds. However, it was felt that the choice of terms would depend on decisions regarding the formulation of the substantive provisions of the convention on this subject. At the early stage of the first reading, pending those decisions, the word "return" was used in the revision of the draft text. Many delegations expressed their preference for the word "repatriation", while some delegations were of the view that the word "disposition" might be more appropriate. Some delegations proposed that the formulation used in Economic and Social Council resolution 2001/13 be employed. The words "to their countries of origin" were placed in square brackets pending examination of the substantive issues involved and decisions on the final formulation of the substantive provisions.

[14] At the first session of the Ad Hoc Committee, a number of delegations objected to the inclusion of integrity and good governance in the objective of the draft convention, given the fact that the

Article 2
Definitions [Use of terms]

For the purposes of this Convention:

Option 1[15]

(a) "Public official" shall mean any person holding a legislative, administrative or judicial office in a State Party, at any level of its hierarchy, whether appointed or elected, and any person in the State Party exercising a public function, including for a public agency or public enterprise;

Option 2[16]

(a) "Public official" shall mean any person holding a legislative, administrative or judicial office in a State Party and any other person exercising a public function for the State Party, also in the non-state sector of a State Party, including for a public agency, a public enterprise and a public utility, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;[17]

[*Subparagraphs (b) and (c) were deleted.*]

(d) "Official of an international organization"[18] shall mean:

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purpose of the convention, once adopted, would be to prevent and combat corruption and to support international cooperation in that context and that dealing with the subject of integrity and good governance in the draft convention would allow for intervention in the affairs of States and non-respect for national sovereignty. Therefore, those delegations suggested that integrity and good governance, as well as transparency and accountability, were general principles that should be stated in the preamble of the convention. Other delegations supported the inclusion of those principles in the statement of purpose. While no decision was taken on this matter at the first session of the Ad Hoc Committee, it was thought that a determination of the nature of the convention would provide the clarity required to permit a decision on the matter.

[15] Proposal submitted at the first session of the Ad Hoc Committee by France and Mexico, at the request of the Chairman. This proposal was intended to reflect the proposals of other delegations, which suggested formulations of this definition in the same vein. This effort notwithstanding, the attention of the Ad Hoc Committee is called to the proposals submitted by the Czech Republic (A/AC.261/L.16) and Ukraine (A/AC.261/L.6).

[16] Proposal submitted at the first session of the Ad Hoc Committee by the delegation of Germany, at the request of the Chairman. This proposal was intended to reflect the proposals of other delegations, which suggested formulations of this definition in the same vein. This effort notwithstanding, the attention of the Ad Hoc Committee is called to the proposals submitted by Egypt (A/AC.261/L.9) and the Russian Federation (A/AC.261/L.8). It was suggested that the two options for this definition might not be alternative but complementary.

[17] Pakistan wished to retain the following formulation as an alternative to both options (A/AC.261/3 (Part I), art. 2, option 6, para. (a)):

"(a) 'Holder of public office' shall mean any official in the legislative, executive, administrative, judicial or military branches of a Government, whether elected or not, including the head of State or Government, minister or parliamentarian, paid or honorary, any person performing a public function for a government department, public agency or a public enterprise and any official or agent of a public international organization."

[18] At the first session of the Ad Hoc Committee, Pakistan proposed replacing these words with the words "Official of a public international organization".

(i) Any official or other contracted employee within the meaning of the status of public officials,[19] of any public international, regional or supranational organization;

(ii) Any person in the service of such an organization, whether seconded or not, who carries out functions equivalent to those performed by the officials or other servants of that organization;

(iii) Any agent of such an organization and any other person not being in its service but carrying out a function of that organization;[20]

(e) "Foreign State" shall include all levels and subdivisions of government, from national to local, and, in the case of federal States, the States and federated entities;[21]

(f) "Foreign public official" shall mean any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for a foreign State, including for a public agency or public enterprise;[22]

(g) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets [or purporting to demonstrate or relating to ownership or other rights pertaining to such assets];

(h) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;

(i) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(j) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;[23]

(k) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in

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[19] At the first session of the Ad Hoc Committee, Pakistan proposed that the words "within the meaning of the status of public officials" be replaced with the words "enjoying a status comparable to that of a public official in a State Party".

[20] This subparagraph is a proposal submitted at the request of the Chairman by the delegation of Germany, supported by other delegations, at the first session of the Ad Hoc Committee.

[21] Text taken from the proposal submitted by France (A/AC.261/IPM/10).

[22] At the first session of the Ad Hoc Committee, Germany proposed the following definition:

> "'Foreign public official' shall mean any person holding a legislative, administrative or judicial office in a foreign State and any other person exercising a public function for a foreign State, also in the non-state sector of the foreign State, including for a public agency, a public enterprise and a public utility, as defined in the domestic law of the foreign State and as applied in the pertinent area of law of the foreign State."

[23] Mexico proposed the insertion of the words "including delivery, as appropriate".

article [...] [Criminalization of the laundering of proceeds of crime] of this Convention;

(l) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

(m) "Corruption" shall mean engaging in or inducing acts that constitute improper performance of duty [or abuse of a position of authority], including acts of omission, in expectation of an advantage or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly given, whether for oneself or on behalf of another;[24]

(n) "Public function" shall mean any temporary or permanent, paid or honorary activity performed by a natural [or legal][25] person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;[26]

(o) "International organization" shall mean a [public,] intergovernmental, [private or non-governmental] organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to this Convention;[27]

(p) "Suspicious transaction" shall mean any unusual transaction that, by reason of its amount, characteristics and periodicity, is inconsistent with the customer's business activity, exceeds the normally applicable parameters of the

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[24] The text of this subparagraph was developed and proposed by the Vice-Chairman with responsibility for this chapter, in consultation with the delegations of Azerbaijan, China, Slovenia and Ukraine. It was not discussed at the first session of the Ad Hoc Committee. The Philippines proposed the following formulation: "'Corruption' shall mean the promising, requesting, offering, giving or accepting, directly or indirectly, of an undue advantage or the prospect thereof that distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof." Colombia suggested that if a sufficiently broad definition could not be agreed upon, the convention should not include a definition of corruption. Instead, the convention should identify and criminalize acts of corruption in the chapter on criminalization.

[25] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[26] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). At its first session, the Ad Hoc Committee decided to revert to this definition at a later stage, as it was related to the definition of "public official". The Russian Federation proposed the following definition (A/AC.261/L.8):

> "'Public function' shall mean any activity performed by a physical person who was elected or is in state or municipal service in any legislative, executive or judicial organ of state power or any municipal body, organization or institution or who is in the service of a local self-government body."

[27] Several delegations were of the view that this definition was not necessary, as the matter was adequately covered with the definition of "official of an international organization". The question of inclusion of private or intergovernmental organizations, as well as the use of the term "public" to qualify an intergovernmental organization, was debated extensively at the first session of the Ad Hoc Committee. It was deemed appropriate to revert to consideration of this definition, including taking a decision on whether to retain it, at a later stage.

market or has no clear legal basis and could constitute or be connected with unlawful activities in general;[28]

(q) "Legal person";[29]

(r) "Preventive measures";[29]

(s) "Act of corruption" shall mean [...];[25]

(t) "Transfer of assets derived from acts of corruption" shall mean [...];[25]

(u) "Repatriation of funds" shall mean [...];[25]

(v) "Illicit enrichment" shall mean [...].[25]

Article 3
Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of corruption and criminal acts related specifically to corruption, irrespective of whether they involve public officials or have been committed in the course of business activity.[30]

2. For the purposes of implementing this Convention, it shall not be necessary for the offences set forth in it to result in damage or harm to state property.

[3. This Convention shall not apply to cases in which an act of corruption is committed in one State, the alleged criminal is a national of that State and is present in the territory of that State and no other State is entitled to exercise its jurisdiction in accordance with article [...] [Jurisdiction], with the exception of the provisions of articles [...] [Mutual legal assistance], [...] [Collection, exchange and analysis of information on the nature of corruption], [...] [Training and technical assistance] and [...] [Preventive measures] of this Convention.][31]

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

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[28] Proposal submitted by Peru at the first session of the Ad Hoc Committee, at the request of the Chairman (A/AC.261/L.13).

[29] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

[30] Some delegations expressed the view that this paragraph, especially its last phrase, might be construed as pre-empting the scope of the articles on criminalization or otherwise making assumptions about issues that had not yet been determined. Pakistan proposed that "concealment of proceeds of corruption" be added as an element of the scope of the convention.

[31] At the first session of the Ad Hoc Committee, it was decided that the text of this paragraph, which appeared in the previous version of the draft text as a second option to paragraph 1, should be retained in square brackets until the determination of other substantive provisions of the convention, which would enable a decision regarding its desirability. Several delegations suggested, however, that this paragraph might be complementary to the previous paragraphs of this article. Some delegations questioned the need for a scope provision, given the structure of the draft convention.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.[32]

II. Preventive measures[33]

[*Article 4 bis*[34]
[...]

Each State Party agrees, to the extent appropriate and consistent with its legal system, to consider[35] to implement those preventive measures set out in this Convention by legislative, administrative or other appropriate measures.]

Article 5
[National][36] preventive anti-corruption policies

1. Each State Party shall, in a manner consistent with the fundamental principles of its legal system, develop a national anti-corruption policy[37] that [includes the participation of civil society and][38] reflects the principles of rule of law, good governance, integrity, transparency and accountability.[39]

2. Each State Party shall ensure that the necessary measures are nationally[40] coordinated, in both planning and implementation.

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[32] At the first session of the Ad Hoc Committee, the delegation of the Philippines proposed the inclusion of a third paragraph to this article as follows (A/AC.261/L.14):

"3. While the full implementation of all provisions in this Convention in the respective jurisdictions of all the States Parties concerned is ideal, it shall not serve as a precondition for returning, to their country of origin, funds derived from or obtained through acts of corruption."

[33] A number of delegations noted that a number of the preventive measures proposed (such as articles 5, 6, 11 and 12) might envisage governmental action that traditionally lay within the responsibility of their constituent states. Accordingly, those delegations observed that the situation of federal States should be taken into account in the further development of these provisions.

[34] Proposal submitted by China at the first session of the Ad Hoc Committee (A/AC.261/L.10).

[35] During the discussion of this proposal at the first session of the Ad Hoc Committee, many delegations were of the view that the provision of article 4 was sufficient to meet the concerns that this proposal intended to satisfy. Other delegations were of the view that if the article were retained, it should be made more mandatory and less restrictive by deleting the phrases "to the extent appropriate" and "to consider".

[36] During the discussion at the first session of the Ad Hoc Committee, several delegations proposed the deletion of the word "national" from the title of the article.

[37] Some delegations proposed the deletion of the remaining text of this paragraph.

[38] Proposal submitted by Mexico at the first session of the Ad Hoc Committee.

[39] Proposal submitted by Spain, on behalf of the States Members of the United Nations that are members of the European Union, covering the title and paragraph 1 of this article (A/AC.261/L.18). At its first session, the Ad Hoc Committee based its first reading of this article on this proposal and on the proposal of Austria, France and the Netherlands for paragraphs 2-6 (A/AC.261/L.25).

[40] Some delegations pointed out potential difficulties that this formulation might entail for federal States. They proposed either the extension of the clause regarding consistency with the

3. Each State Party shall endeavour to evaluate periodically existing relevant legal instruments and public practices with a view to detecting their vulnerability to corruption and criminal acts related specifically to corruption.

4. Each State Party shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of corruption and criminal acts related specifically to corruption.

5. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing and implementing a national integrity policy.[41] Such information shall contain the name and address of bodies referred to in article [...] [Anti-corruption bodies] of this Convention.[42]

6. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This shall include participation in international projects aimed at the prevention of corruption and criminal acts related specifically to corruption.[43, 44]

Article 5 bis[45, 46]
Anti-corruption bodies

1. Each State Party shall, in accordance with its domestic legal system, establish bodies such as:

(a) A national anti-corruption[47] agency to survey the national anti-corruption policy referred to in paragraph 1 of article 5; or

(b) A public service commission or ombudsman; or

(c) A specialized body to prevent corruption, capable of developing multidisciplinary methods to increase knowledge about corruption and to identify the different types of corruption.[48, 49]

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fundamental principles of a State's legal system, contained in paragraph 1, to this paragraph, or the further refinement of this paragraph, with the possibility of deleting this word.

[41] Some delegations proposed to replace the words "a national integrity policy" with the words "a national policy on combating corruption".

[42] Some delegations proposed that this paragraph be moved to article 5 bis, as it contained a provision related to an institution for combating corruption and not to preventive policies.

[43] Some delegations proposed the deletion of the last sentence of this paragraph or, alternatively, the inclusion of the phrase "where appropriate" to qualify the sentence.

[44] Proposal submitted by Austria, France and the Netherlands to replace paragraphs 2-6 of the previous version of article 5 (A/AC.261/L.25). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session.

[45] Proposal submitted by Austria, France and the Netherlands to replace the previous version of this article (A/AC.261/L.25). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session.

[46] One delegation suggested the deletion of this article.

[47] Mexico proposed the deletion of this word.

[48] Some delegations proposed the deletion of subparagraphs (a)-(c) for being too specific.

[49] Colombia and Mexico proposed the insertion of an additional subparagraph, reading as follows:

2. States Parties shall[50] grant the specialized bodies referred to in paragraph 1 of this article independence[51] and the necessary material means and specialized staff, as well as the training that such staff may require to perform their functions.

3. Each State Party shall consider establishing or appointing, within its public administration,[52] a contact point or service to which any natural or legal person may apply in order to obtain advice or to report information concerning acts of corruption.

Article 6[53]
Public sector

1. States Parties shall endeavour to adopt, maintain and strengthen:

(a) Systems concerning government hiring and promoting of civil servants and, where appropriate, other non-elected public officials,[54] that are efficient, transparent and objective, using criteria based on merit and equity. Those systems shall not prevent States Parties from maintaining or adopting specific legitimate measures for disadvantaged groups (affirmative action);[55]

(b) Thorough procedures for the selection of public officials for positions that are especially vulnerable to corruption;

(c) Systems for establishing adequate salaries and harmonization of payments and for facilitating efficient job rotation, where appropriate;

(d) Education and training programmes for public officials to enable them to meet the requirements of the correct, honourable and proper performance of public functions.[56, 57, 58]

"(d) Superior oversight bodies for the purpose of implementing mechanisms for preventing, detecting, punishing and eradicating corrupt practices."

[50] Mexico proposed the insertion of the words "endeavour to".

[51] Some delegations questioned the meaning of the word "independence", especially in relation to which authority such independence was envisaged.

[52] Mexico proposed the replacement of the words "public administration" with the words "public sector".

[53] Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 6 (A/AC.261/L.19). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session.

[54] The use of the terms in this article should be re-examined after the second reading of article 2 (Definitions [Use of terms]).

[55] Proposal submitted by Austria, France, India and the Netherlands to replace subparagraphs (a) and (b) of the previous version of article 6 (A/AC.261/L.35).

[56] Azerbaijan proposed that subparagraph (d) be revised to read as follows (A/AC.261/L.17):

"(d) Systems creating conditions for the integrity of public officials ..."

[57] Peru proposed that paragraph 1 of this article read as follows (A/AC 261/L.28):

"1. States Parties shall endeavour, in accordance with the principles of transparency, equity and efficiency, to adopt and strengthen systems of government hiring of public officials, as well as education and training programmes for such officials."

[58] Some delegations were of the view that paragraph 1 was too detailed and could be shortened and formulated in a more general fashion.

2. States Parties shall take such measures as may be necessary, within the context of their legal system, to ensure that public officials and civil servants receive specialized, specific and appropriate training concerning the risks of corruption to which they may be exposed by virtue of their functions and the supervisory missions and investigations for which they are responsible.

3. States Parties shall consider, while respecting the basic principles of their domestic law, taking such measures as may be necessary to adopt and implement systems for declaring[59] the assets or income of persons who perform specifically identified public functions and, where appropriate, to make such declarations public.[60]

Article 7[61, 62]
Code of conduct for public officials

1. States Parties shall endeavour, in particular through the preparation of adequate guidelines, to promote ethical behaviour and to foster a culture of rejection of corruption through respect for public[63] honesty, the proper exercise of responsibilities and the development of integrity of public officials.[64]

2. In particular, each State Party shall agree to apply, within its own institutional[65] and legal systems, standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to

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[59] Turkey proposed the insertion of the words "on a regular basis" in this paragraph.

[60] Algeria proposed that the text of article 6 read as follows (A/AC.261/L.27):

"*Article 6*

"*Public administration*

"1. Each State Party shall maintain and adopt systems of hiring and promoting public officials in accordance with rules based on legality and transparency.

"2. Each State Party shall prepare programmes, guides and manuals in the field of training and retraining with a view to improving performance of public functions, if necessary in cooperation with the competent bodies of the United Nations system and other multilateral organizations.

"3. Each State Party shall establish, in accordance with fundamental principles of its domestic law, modalities for the declaration of income."

[61] Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 7 (A/AC.261/L.20). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session.

[62] Algeria proposed that the text of article 7 read as follows (A/AC.261/L.30):

"*Article 7*

"*Code of conduct for public officials*

"1. Each State Party shall apply, in accordance with its domestic law, in the form of codes of ethics and conduct, such measures as are necessary to prevent acts of corruption and ensure the conservation and effective use of public resources entrusted to public officials in the performance of their functions.

"2. The codes of ethics and conduct shall, where appropriate, be based on the relevant initiatives of regional, interregional and multilateral organizations."

[63] Several delegations suggested the deletion of this word.

[64] Mexico proposed the addition of the following text (A/AC.261/L.33):

"For this purpose, the guidelines shall take account of instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities."

[65] One delegation suggested the replacement of this word with the word "administrative".

prevent conflicts of interest[66] and shall mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions.[67]

3. States Parties shall endeavour[68] to incorporate into those standards[69] the elements set out in the International Code of Conduct for Public Officials that appears in the annex to General Assembly resolution 51/59 of 12 December 1996.[70]

4. Each State Party shall also establish measures and systems to require public officials to report to appropriate authorities acts of corruption committed in the performance of public functions.[71]

5. Each State Party shall take such measures as may be necessary to ensure that no prejudice is caused to or sanction taken against public officials for the mere fact that they have reported to the competent authorities, in good faith and on reasonable grounds, any incidents that may be considered to constitute an illegal or criminal activity, including those involving the public service.[72]

6. In addition, each State Party shall, where appropriate, establish measures and systems to require public officials to make declarations to the appropriate authorities regarding:

(a) Employment or investment that may constitute a conflict of interest with respect to their functions as public officials;

(b) Gifts or benefits obtained in the course of their duties and functions as public officials.[73, 74]

7. In order to enforce any standards established in accordance with paragraphs 2, 4 and 6 of this article, States Parties shall consider adopting, in

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[66] Some delegations suggested that there might be a need to define this term.

[67] Some delegations proposed the deletion of the second sentence of this paragraph, on the grounds that it was too detailed.

[68] One delegation suggested the insertion of the words "where appropriate".

[69] One delegation suggested the insertion of the words "at least" here.

[70] Most delegations saw no need to have the International Code of Conduct as an annex to the convention. While some delegations were of the view that the paragraph could be deleted, many others wished to retain the references to the International Code of Conduct and General Assembly resolution 51/59. Some delegations, however, questioned whether those references would be appropriate, as there were potential implications arising from the different juridical value of a resolution and a convention.

[71] Some delegations wished this paragraph to be expanded in order to cover business activity. Other delegations suggested that this paragraph be merged with paragraph 5.

[72] Some delegations expressed the view that this paragraph should be moved to the article on protection of witnesses. Others wished this paragraph to be redrafted and merged with paragraph 4.

[73] Azerbaijan proposed the insertion at the end of this subparagraph of the words "exceeding the limits established by domestic law".

[74] Mexico proposed to replace paragraph 6 with the following text (A/AC.261/L.33):

"6. Each State Party shall establish such measures as may be necessary:

"(a) To ensure that its public officials declare to the appropriate authority any employment or investment that may constitute a conflict of interest and to prevent such undertakings;

"(b) To prevent or limit the receipt of gifts or benefits by public officials by virtue of their function."

accordance with fundamental principles of their domestic law, disciplinary[75] measures against public officials who violate those standards.[76]

8. For the purposes of implementing the provisions of this article, States Parties shall take account of the relevant initiatives of regional, interregional and multilateral organizations.[77, 78]

Article 8[79]

Public procurement and public financial management

1. Each State Party shall take the necessary steps to establish procurement rules[80] based on transparency, openness and competition. Such rules shall include, inter alia:[81]

(a) Public distribution of information on both tenders and awarded contracts;

(b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values;[82] and

(c) The requirement to base public procurement decisions on objective and transparent reasons in order to facilitate the subsequent verification of the correct application of the rules.[83, 84]

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[75] Some delegations proposed to replace the word "disciplinary" with the word "appropriate" or "relevant".

[76] Brazil proposed to add the following paragraph (A/AC.261/L.32):

"Each State Party shall also, where appropriate, establish measures and systems requiring each public official not to protect or defend any interest in public institutions after being dismissed from his or her functions, for a period to be determined by the State Party and to be proportionate to the level of office held by the public official at the time of dismissal."

[77] At the first session of the Ad Hoc Committee, most delegations proposed the deletion of this paragraph.

[78] Argentina proposed the inclusion of a new article entitled "Conflicts of interest" after this article.

[79] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

[80] Some delegations called for consistency with the terminology used in the context of the World Trade Organization in connection with issues covered by this article. Some delegations pointed out the need to foresee exceptions for the procurement standards found in this article. For example, those delegations mentioned the need for flexibility in procurements involving *de minimis* amounts.

[81] Several delegations suggested a more general drafting of this paragraph in order to eliminate unnecessary detail and to instil flexibility, possibly with the insertion of a clause on consistency with domestic law.

[82] Mexico proposed to replace subparagraph (b) with the following text (A/AC.261/L.33):

"(b) Use of predetermined and objective selection criteria and bidding rules, incorporating appropriate threshold values, to which civil society shall have access;"

[83] Mexico proposed to add a new subparagraph (d) as follows (A/AC.261/L.33):

"(d) Limitation of the discretionary authority of public officials with respect to the granting of administrative authorizations and resolutions."

[84] South Africa proposed to add the following subparagraphs after subparagraph (c) (A/AC.261/L.23):

"(d) Security clearance of procurement personnel;

"(e) Screening of individuals and businesses to which contracts are awarded;

"(f) Declaration of financial interests of employees involved in procurement."

1 bis. States Parties shall endeavour to adopt the necessary legislative measures to introduce uniform legislation, rules and manuals for all the procurement agencies in their respective jurisdictions and those regulations shall be prepared with due regard to recognized international texts in the area.[85]

2. Each State Party shall take all relevant measures to ensure:

(a) The existence of and compliance with transparent procedures for the management of public finances, including the preparation and approval of the national budget;[86]

(b) Timely reporting on expenditure and timely submission of accounts to ensure effective and objective scrutiny of public finances [in particular by higher administrative and financial oversight bodies]; and

(c) Adequate powers of remedy in the case of failure to comply with the requirements established in accordance with this paragraph.

3. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption.[87]

4. Each State Party shall take such measures as may be necessary, within the framework of its domestic law on public accounting, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

5. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions or falsifications in respect of the books, records, accounts and financial statements of administrations and public entities.[88]

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[85] Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

[86] South Africa proposed to amend paragraph 2 (a) to read as follows (A/AC.261/L.23):

"2. Each State Party shall take all relevant measures to ensure:

"(a) The existence of and compliance with transparent procedures for the management of public finances, including:

"(i) The preparation and approval of the national budget;

"(ii) Effective and efficient systems of risk management and internal control;

"(iii) A system of internal audit under the control and direction of an audit committee within public institutions;"

[87] Mexico proposed to replace paragraph 3 with the following text (A/AC.261/L.33):

"3. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of state and public entities with a view to preventing corruption, as well as mechanisms to provide effective and timely assistance to taxpayers regarding steps and measures to be taken in their dealings with the fiscal authorities."

[88] Several delegations suggested that this paragraph should be moved to the chapter on criminalization.

6. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations[89] takes into consideration the consequences of acts of corruption committed by public officials.[90, 91]

Article 9[92]
Public reporting

1. States Parties shall take such measures as may be necessary to ensure that the organization, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring, as regards access to information, as much transparency as is consistent with the need to achieve effectiveness.[93]

2. Each State Party shall take the necessary measures to establish appropriate systems for public reporting.[94] Those systems may include:

(a) Reporting requirements for government departments and agencies;

(b) Publication of annual government reports.[95]

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[89] Mexico proposed to replace the words "public administrations" with the words "the public sector".

[90] Many delegations were of the view that this paragraph required redrafting to make it more precise.

[91] Peru proposed that article 8 read as follows (A/AC.261/L.38):

"*Article 8*

"*Public procurement and public financial management*

"1. Each State Party shall, in conformity with the principles of transparency and competency, establish appropriate and effective rules on public procurement and public financial management.

"2. Each State Party shall take such measures as may be necessary to adopt and implement adequate systems for the recovery and monitoring of the income of public entities with a view to preventing corruption.

"3. Each State Party shall take such measures as may be necessary, within the framework of its domestic law, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents by public administrations.

"4. Each State Party shall take such measures as may be necessary to ensure that the system of accountability of public administrations takes into consideration the consequences of acts of corruption committed by public officials and shall also provide effective, proportionate and dissuasive civil, administrative or criminal penalties in the case of failure to comply with the requirements established in accordance with paragraph 3 of this article."

[92] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

[93] Some delegations suggested that this paragraph would require refinement to make it more precise.

[94] Some delegations suggested the deletion of the rest of the paragraph in order to eliminate unnecessary detail. Others maintained that the inclusion of examples was essential to provide guidance for the application of the article.

[95] Mexico proposed the addition of a new subparagraph to read as follows (A/AC.261/L.34):

"(c) Mechanisms that promote transparency in the management of public affairs, including relations between the authorities and the general public, which provide, on a mandatory basis, information on the results of the steps and measures taken in dealings with them."

Article 9 bis[96]
Measures with respect to the judiciary

As part of its anti-corruption policy, as referred to in article [...] [[National] preventive anti-corruption policies], and bearing in mind the crucial role of the judiciary in the fight against corruption, each State Party shall take, in accordance with fundamental principles of its domestic law, appropriate measures to reduce any opportunities for judicial corruption, in full observance of judicial independence.[97] Such measures may include:

(a) Measures[98] to counter risk of conflict of interest;

(b) Measures for ensuring standards of conduct for members of the judiciary;

(c) Measures for dealing with complaints with respect to the conduct of the judiciary and providing for appropriate sanctions;

(d) Transparent and fair procedures for fixing remuneration and ensuring stability of tenure.[99, 100]

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[96] Revised proposal submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.261/L.45) following consultations during the first session of the Ad Hoc Committee after the first reading of that delegation's original proposal (A/AC.261/L.2). Some delegations indicated that they were not entirely comfortable with a separate article on the judiciary. One delegation expressed the concern that subparagraphs (a) to (c) were too detailed.

[97] Some delegations suggested amending this phrase to read "without prejudice to judicial independence". One delegation proposed the phrase "with full observance of the independence of the judiciary".

[98] It was suggested that this word should be replaced with the words "rules and procedures" or "measures and procedures".

[99] Slovenia proposed to add the following paragraph to this article (A/AC.261/L.36):

"Measures adopted pursuant to paragraph 1 of this article shall be by analogy introduced and applied within the public or state prosecution service in those States Parties where it enjoys similar independence as the judicial service."

[100] Pakistan proposed replacing this article with the following text:

"In view of the gravity of the consequences of corruption in the judiciary, each State Party shall apply the provisions of articles 6 and 7 of this Convention more vigorously in the case of the judiciary, without however compromising its independence and without interference of other organs of the State in the affairs of the judiciary."

Article 10[101]
Funding of political parties[102]

1. Each State Party shall adopt, maintain and strengthen[103] measures and regulations concerning the funding of political parties. Such measures and regulations shall serve:

(a) To prevent conflicts of interest;[104]

(b) To preserve the integrity of democratic political structures and processes;

(c) To proscribe[105] the use of funds acquired through illegal and corrupt practices to finance political parties; and[106]

(d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit.[107]

2. Each State Party shall take measures to avoid as far as possible conflicts of interest owing to simultaneous holding of elective office and responsibilities in the private sector.[108]

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[101] Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 10 (A/AC.261/L.2[1]). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session. Some delegations suggested the deletion of this article. One delegation, while supporting the goals behind this article, questioned whether negotiation of such a provision would be practical in the context of this convention, given the enormous variations in political systems.

[102] One delegation suggested that, if this article were included, it would necessitate a definition of "political party".

[103] While expressing its preference for deletion, one delegation suggested that an acceptable formulation would be to make this article optional by using the formulation "may adopt, in accordance with fundamental principles of domestic law".

[104] Several delegations called for this concept to be better defined.

[105] Some delegations suggested replacing this word with the word "prohibit" or the words "eliminate the possibility of".

[106] Azerbaijan proposed to amend subparagraphs (a), (b) and (c) to read (A/AC.261/L.37):

"(a) To prevent the exercise of improper, corrupting influence;

"(b) To prevent the violation through corrupt acts of the independence and integrity of democratic and other processes;

"(c) To preclude the use of funds acquired through illegal and corrupt practices to finance political parties; and"

[107] Egypt proposed the addition of the words "and their sources" at the end of this subparagraph.

[108] Argentina proposed the addition of paragraph that would read as follows: "Political parties shall make public the origin and destination of their funds and property, subject to the constitution and fundamental legal principles of each State Party".

Article 11[109]
Private sector

1. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce[110] existing or future opportunities for engaging in corruption and criminal acts related specifically to corruption,[111] involving the private sector through appropriate legislative, administrative or other measures. Those measures should[112] focus on:[113]

(a) Strengthening cooperation between law enforcement agencies or prosecutors[114] and relevant private entities;[115]

(b) Promoting the development of standards and procedures designed to safeguard the integrity of private entities, as well as codes of conduct for all relevant professions, such as lawyers, notaries public, tax consultants and accountants;[116]

(c) Establishing an adequate supervisory framework for financial institutions, based on the principles of transparency, accountability and sound

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[109] Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 11 (A/AC.261/L.22). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session. While many delegations were generally supportive of this article, many delegations also expressed concern about the level of regulatory detail it contained. In particular, concern was expressed about the many detailed regulatory terms used in paragraph 1 (d). Some delegations suggested the deletion of this article.

[110] Some delegations proposed to use the word "curtail" or "eliminate" instead of the word "reduce".

[111] Some delegations suggested supplementing this sentence with the words "and other offences specifically related to corruption".

[112] Some delegations suggested the inclusion of the expression "inter alia" here.

[113] Mexico proposed the following amended text for paragraph 1 (A/AC.261/L.34):

"(b) Codes of ethics and standards of conduct for the correct, honourable and proper performance of activities by individuals. Such standards shall be aimed at preventing conflicts of interest, both between individuals and between individuals and public officials. They shall also establish methods and systems for promoting the reporting of illicit acts of corruption between individuals and in their dealings with public officials;

"(c) [Former subpara. (b)];

"(d) [Former subpara. (c)];

"(e) [Former subpara. (d)];

"(f) [Former subpara. (e)];

"(g) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;

"(h) Mechanisms for exchanging information on multinational and transnational corporations that may have committed illicit or improper acts or administrative offences during a government bidding process in any State Party."

[114] Some delegations proposed the deletion of the reference to prosecutors, as they were considered to be part of law enforcement agencies.

[115] Many delegations called for a revision of this article to ensure consistency in the terminology used. However, some delegations were of the view that terms such as "private entities" did not require a definition, as they had not been defined in the United Nations Convention against Transnational Organized Crime, from which this article had been drawn.

[116] This indicative list might be further developed in the *travaux préparatoires*. However, several delegations suggested that there was no need to go into detail.

corporate governance and with appropriate capacity for international collaboration on cross-border financial transactions;[117]

(d) Preventing the misuse of legal persons for committing or concealing acts of corruption by identifying constituents, holders of capital and shares, economic beneficiaries, through registration obligations, advertising rules and, more generally, by promoting transparency in financial, legal and accounting transactions, inter alia, through the establishment or maintenance of public records on legal and natural persons involved in the establishment, management and funding[118] of legal persons;

(e) Preventing the misuse of procedures governing subsidies and licences granted by public authorities for commercial activity.[119]

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to promote transparency and competition among companies incorporated within their jurisdiction, by avoiding any such regulations as may be redundant or prone to misuse as a result of corruption.

3. Each State Party shall deny the tax deductibility of bribes, the latter being one of the constituent elements of the offences established in accordance with article [...] [Criminalization of corruption involving a public official] or [...] [Criminalization of corruption in the private sector] of this Convention.

Article 12[120]
Accounting

1. In order to combat corruption effectively, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books, double bookkeeping, improperly registered[121] or inadequately identified transactions, the recording of non-existent expenditure, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of committing any of the offences established in accordance with articles [...] [Criminalization of corruption by a public official], [...] [Criminalization of corruption in the private sector] or [...] [Criminalization of the laundering of proceeds of corruption] of this Convention or of hiding such offences.

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[117] France expressed reservations about this paragraph.

[118] Some delegations proposed the deletion of this word, pointing out that its inclusion would require comprehensive record keeping on a plethora of forms of ownership and debt, which would be almost impossible to provide.

[119] Pakistan proposed to add the following text, which was previously contained in article 18, paragraph 2, subparagraphs (d) (i) and (ii) (A/AC.261/3 (Part I)):

"(i) The creation of public records on legal and natural persons who have taken part in the formation, administration and financing of legal persons;

"(ii) The creation of the possibility of preventing persons convicted of crimes covered by this Convention from acting as administrators in companies of other legal persons for a reasonable period of time by a court order or any other suitable procedure."

[120] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10).

[121] Proposal of Mexico.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications referred to in paragraph 1 of this article[122] in respect of the books, records, accounts and financial statements of such companies.[123]

3. Each State Party shall take such measures as are necessary to ensure that enterprises and commercial companies have sufficient internal accounting controls to make it possible to detect acts of corruption.

4. Each State Party shall take such measures as are necessary to ensure that accounting in enterprises and commercial companies is subjected to appropriate auditing and certification procedures, in particular by professionals or specialized enterprises approved by the public authority.[124]

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[122] Proposal of Mexico. With the insertion of these words in this paragraph and the insertion of its proposal in paragraph 1, Mexico withdrew its proposal for article 15.

[123] Article 8 of the Convention on Combating Bribery of Foreign Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (with slight changes). Some delegations suggested that this paragraph should be moved to the chapter on criminalization.

[124] Some delegations suggested that paragraphs 3 and 4 were redundant and should be deleted.

Article 13[125, 126, 127]
Civil society[128]

1. Each State Party shall take appropriate measures within its means[129] to promote an active civil society, including non-governmental organizations, and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

(a) Involvement of the public in decision-making processes by enhancing transparency;[130]

(b) Optimum[131] access to information for the public;

(c) Protection of "whistle-blowers"[132] as set forth in article [...] [Protection of "whistle-blowers" and witnesses] of this Convention; and

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[125] Proposal submitted by Austria, France and the Netherlands to replace the previous version of article 13 (A/AC.261/L.24). The revised proposal intended to take into account concerns expressed by some delegations and was used by the Ad Hoc Committee for its first reading of the text at its first session. Some delegations suggested the deletion of this article.

[126] China proposed that article 13 be amended to read (A/AC.261/L.29):

"*Article 13*

"*Public awareness*

"1. States Parties shall endeavour to promote public awareness regarding the existence, causes, gravity and threat of corruption.

"2. States Parties shall encourage the media to exercise functions of supervision over corruption by disseminating information on cases involving corruption."

[127] Mexico proposed to replace this article with the following text (A/AC.261/L.34):

"1. Each State Party shall take appropriate measures within its means to promote an active civil society, including non-governmental organizations, and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. The role of civil society should be strengthened by measures such as:

"(a) Inclusion of the public in decision-making processes through greater transparency;

"(b) Optimum access to information for the public;

"(c) Protection of 'whistle-blowers' as set forth in article [...] [Protection of 'whistle-blowers' and witnesses] of this Convention; and

"(d) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.

"2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to restrictions established by law."

[128] Many delegations were of the view that the title and subsequent terminology used in the text of this article could be amended to make the article more applicable in different systems. Terms suggested to achieve this goal were "public awareness" or "public involvement".

[129] Some delegations suggested adding the words "in accordance with fundamental principles of domestic law".

[130] Several delegations were of the view that this paragraph could be deleted.

[131] Many delegations considered this term too vague and therefore inappropriate for a legal instrument.

[132] Many delegations were of the view that this term was inappropriate and a better one should be found to replace it. In this connection, several delegations suggested the use of the terms "informants" or "individuals who expose acts of corruption". Some delegations also suggested that this provision should be moved to the article on the protection of witnesses.

(d) Public information activities that contribute to non-tolerance of corruption as well as programmes of public education, including school curricula.[133, 134]

2. States Parties shall guarantee to the media the freedom to receive, publish and disseminate information concerning cases of corruption, subject only to restrictions that are provided by law[135] and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*) or of public health or morals.[136]

Article 14[137]
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and for natural or legal persons engaged in professional or business activities, including non-profit organizations, particularly susceptible to money-laundering, within its competence, in order to deter and detect money-laundering mechanisms, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious or unusual transactions;

(b) Shall, without prejudice to article [...] [Mutual legal assistance] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering, including, where appropriate

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133 It was suggested that the proposal of Saudi Arabia (A/AC.261/L.15) could be incorporated into the present text. That proposal read as follows:

"States Parties shall, in accordance with fundamental principles of their domestic law and wherever possible, take such measures as may be necessary to introduce the subject of corruption and its harmful effects in the curricula of their general and university education."

134 The Philippines proposed the insertion of another subparagraph, which would read as follows (A/AC.261/IPM/24):

"(...) Creation of community-based corruption prevention units or junior graft watch units to service as accredited private monitors."

135 Some delegations proposed to end this paragraph at this point, omitting the specific references contained in subparagraphs (a) and (b). Some delegations who expressed concern about this paragraph were of the view that it was not appropriate for the Convention to tamper with concepts of media freedoms and rights addressed extensively in existing human rights instruments. Other delegations considered the inclusion of the subparagraphs essential.

136 Pakistan proposed to add the following paragraph to this article:

"States Parties shall ensure promotion and development of a framework of cooperation to strengthen the capacity and capability of those States which do not have a developed social infrastructure to undertake effective measures under paragraph 1 of this article."

137 Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). At the first session of the Ad Hoc Committee, there was broad acceptance of the importance of the article. However, as the text had been derived from article 7 of the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention"), strong preference was voiced to avoid departing from the formulation of that article. In addition, it was felt that this article would need to be revisited after consideration of chapter V of the draft convention.

under domestic law, judicial authorities, have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, seizure, analysis and, where appropriate, dissemination of information received through reports of suspicious or unusual transactions, as potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

[2 bis. Each State Party shall endeavour to take effective measures to ensure that there is satisfactory monitoring of abnormal banking transactions and, in appropriate cases, the monitoring department may require proof to satisfy itself with regard to the legitimacy of the origin of the money.][138]

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

[*Articles 15-18 were deleted.*]

[138] Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23). This proposal was not discussed at the first session of the Ad Hoc Committee.

III. Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement[139]

Article 19

Criminalization of corruption involving a public official[140]

Option 1[141]

Each State Party shall adopt[142] such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:[143]

(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

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[139] South Africa submitted a proposal that was intended to consolidate in a single article a number of criminalization provisions (A/AC.261/L.11). During the discussion at the first session of the Ad Hoc Committee, many delegations expressed the wish to consider this chapter in its present form, without precluding reverting to the approach of the proposal of South Africa after completing such consideration.

[140] At the first session of the Ad Hoc Committee, many delegations proposed to replace the words "corruption involving a public official" with the words "bribery of public officials", since the text of this article covered only the criminalization of bribery involving a public official, but not other corrupt activities. Some delegations wished to retain the current formulation of the title, as it was derived from article 8 of the Organized Crime Convention. One delegation suggested the inclusion of the word "domestic" or "national" to qualify "public official". It was suggested that that title would need to be finalized after determination of the contents of this and other articles in this chapter.

[141] Text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and France (A/AC.261/IPM/10). At the first session of the Ad Hoc Committee, Colombia indicated that it was ready to withdraw its proposal (which appeared as option 3 in the previous version of the draft text), as its original intention was to follow the formulation of the Organized Crime Convention, to which this option was closest. Many delegations expressed their preference for this option, in view of the fact that it was derived from the Organized Crime Convention and not only represented recent consensus, but was also a text of high quality. Other delegations stated that consensus language from the Organized Crime Convention should not act as a bar to improving international law and meeting the challenges posed by the new convention.

[142] Some delegations proposed the inclusion of the clause "in accordance with fundamental principles of its domestic law". Many other delegations opposed the inclusion of such a clause in criminalization articles of the draft convention and indicated that a provision similar to that of article 34, paragraph 1, of the Organized Crime Convention, which was included in article 68 of the present draft text, would be sufficient to meet concerns of delegations.

[143] Several delegations suggested that intent was implied in the types of criminal conduct covered by this and other articles in this chapter and should not be made a constituent element of the offence. Other delegations recalled the lengthy debates on this subject during the negotiations of the Organized Crime Convention, emphasizing the need for the inclusion of this element for many legal systems. Those delegations also recalled the solution found in the Organized Crime Convention, with the inclusion of language such as that contained in paragraph 2 of article 5 of the Convention, and suggested that a similar course of action be followed also in respect of the criminalization provisions in the present draft convention.

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Option 2[144]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption:

(a) The solicitation or acceptance, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage[145] for himself or herself or for another person or entity, or the promise to grant them, in exchange for any act or omission in the performance of his or her public functions;

(b) The promising, offering or granting, directly or indirectly, to a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.

Article 19 bis
Criminalization of corruption involving a foreign public official[146]

Option 1

1. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article [...] [Criminalization of corruption involving a public official] of this Convention involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.[147]

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[144] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). Many delegations expressed their preference for this option, in view of the broader approach it took to the question of public officials, especially through the inclusion of persons performing public functions. Several delegations pointed out that this was a matter pertaining to a decision on the definition of "public official", which was still outstanding. Several delegations suggested that options 1 and 2 could be merged. Other delegations, while positively disposed to such a merger, suggested that this possibility should be explored after discussion of the chapter on criminalization.

[145] Some delegations were in favour of the specificity contained in this paragraph on the matter of undue benefit. Other delegations were of the view that attempts to compile lists in legal texts often resulted in omissions and preferred a more general formulation, as the one contained in option 1.

[146] During the first reading of the draft text at the first session of the Ad Hoc Committee, several delegations drew attention to potential difficulties that any formulation of this article might entail in relation to jurisdictional matters and conflict with other international legal instruments concerning privileges and immunities. Other delegations stated that jurisdictional matters could be dealt with in article 50 (Jurisdiction), while privileges and immunities should not pose insurmountable problems, since they were subject to waivers under appropriate circumstances.

[147] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4). During the first reading of the draft text at the first session of the Ad Hoc Committee, several

2. Intent may reasonably be deduced from the circumstances.[148]

Option 2[149]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article [...] [Active corruption of a national public official] of this Convention, involving an international civil servant, a member of a parliamentary assembly of an international organization or holders of judicial office or officials of an international court.

2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in article [...] [Passive corruption of a national public official][150] of this Convention involving an international civil servant, a member of a parliamentary assembly of an international organization of which the State Party is a member or holders of judicial office or officials of an international court whose jurisdiction is accepted by the State Party.

Option 3[151]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the intentional promising, offering or granting to a foreign public official, directly or indirectly, by its nationals or natural or legal persons who have habitual residence in its territory or are domiciled therein, of any article of monetary value or other undue benefit that are to his or her own advantage or to the advantage of another person or entity, such as a gift, favour or advantage, in exchange for which that official, in the performance of his or her public functions, performs or fails to perform any act in relation to an economic, financial or commercial transaction.

Option 4[152]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the offering by a citizen of a State Party to a public official of another State Party of money, articles of monetary value, favours or any other

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delegations welcomed the opportunity and stressed the advisability of drawing inspiration from the Organized Crime Convention and striving to find common ground on improved language.

148 Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

149 Text taken from the proposal submitted by France (A/AC.261/IPM/10).

150 During the first reading of the draft text at the first session of the Ad Hoc Committee, several delegations expressed concern about whether it would be appropriate or feasible to envisage criminalization of passive corruption of foreign public officials. Other delegations were of the view that criminalization of passive corruption of foreign public officials was feasible, but required careful consideration and drafting.

151 Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text at the first session of the Ad Hoc Committee, Mexico and other delegations expressed concern that the other proposed options, as drafted, might be understood or interpreted to permit extraterritorial jurisdiction. Several other delegations pointed out that this was not the intention of this article and that this article should be considered in conjunction with and in the light of article 50 (Jurisdiction).

152 Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

advantage in order that the official act or refrain from acting in the exercise of his or her duties in respect of a financial or commercial transaction.

2. States Parties shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant; [national or foreign] parliamentarians and other members of [international] parliamentary assemblies; judges and officials of [international] courts; trading in influence whether as the source of influence or beneficiary of the advantage obtained [active or passive trading in influence]; laundering of proceeds from corruption offences; accounting offences related to corruption offences.[153]

3. Each State Party shall adopt all legislative and administrative measures necessary in order to criminalize the behaviours listed in paragraph 1 of this article when committed against a foreign public official or when such action involves an international public official.[154]

Article 20
Complicity, instigation or attempt[155]

Option 1[156]

Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.

Option 2[157]

1. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation as an accomplice or instigator in an offence established in accordance with articles [...] of this Convention.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with articles [...] of this Convention.

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[153] See the Criminal Law Convention on Corruption of the Council of Europe (Council of Europe, *European Treaty Series*, No. 173, the "Criminal Law Convention").

[154] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

[155] During the first reading of the draft text at the first session of the Ad Hoc Committee, it was pointed out by some delegations that attempt was an intrinsic element of the offences under consideration and, consequently, should not be included in this article.

[156] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4). During the first reading of the draft text at the first session of the Ad Hoc Committee, several delegations expressed their support for this option, because of its brevity and origin from the Organized Crime Convention. It was pointed out, however, that whichever option was chosen by the Ad Hoc Committee after further consideration, this article should be placed after all other criminalization articles and be made applicable to all those articles.

[157] Text taken from the proposal submitted by France (A/AC.261/IPM/10).

Option 3[158]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences participation as the perpetrator, co-perpetrator, instigator, accomplice, abettor or in any other capacity in the commission, attempted commission, association with or conspiracy to commit any of the acts referred to in article [...] [Criminalization of corruption of public officials] of this Convention, as well as conduct by any person who, with knowledge of the aim of an act of corruption, takes an active part in organizing, managing, aiding, abetting, facilitating, authorizing or counselling such acts.

Option 4[159]

Each State Party shall adopt the necessary measures to establish as a criminal offence participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of or in any collaboration or conspiracy to commit any of the offences established in accordance with article [...] [Criminalization of corruption of public officials] of this Convention.

Option 5[160]

Each State Party shall introduce all legislative and administrative measures necessary in order to consider any contribution to the commitment of a crime set forth in article [...] [Criminalization of corruption of public officials] as taking part in the crime.

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[158] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text at the first session of the Ad Hoc Committee, one delegation expressed concern regarding the inclusion of the concept of conspiracy in this option and in option 4, since it was a concept that remained alien to some legal systems for economic crimes. Other delegations disagreed and pointed out that the Organized Crime Convention contained solutions to the problem of bridging the gap on this issue between different legal systems.

[159] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[160] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

Article 21
Trading in influence[161]

Option 1[162]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promising, offering or granting, directly or indirectly, of any undue advantage in order to induce a public official or any other person to abuse his or her real or supposed influence with a view to obtaining from an administration or a public authority of the State Party any undue advantage or any favourable decision for the original instigator of the act or for any other person;[163]

(b) For a public official or any other person, the soliciting or accepting, directly or indirectly, of any undue advantage for himself or herself or for another person, through the abuse[164] of his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party any undue advantage or any favourable decision for himself or herself or for any other person,[165] whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.[166, 167]

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[161] During the first reading of the draft text at the first session of the Ad Hoc Committee, several delegations raised the issue of whether the title was appropriate and suggested that it should read "Misuse of influence". Other delegations stated that that was a term of art and should not be changed.

[162] Text taken from the proposal submitted by France (A/AC.261/IPM/10). During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations expressed preference for this option as the basis for further work. Several delegations highlighted the subtleness of the concept and the subsequent need for careful consideration in order to arrive at the required clarity in the final formulation, which would make this article viable. Some delegations expressed serious misgivings about the inclusion of this article. Still others expressed their preference for not including such a provision, but indicated that if there was consensus for inclusion, care should be taken to avoid inadvertent interference with legitimate political activity.

[163] One delegation suggested the insertion of the words "or entity" after the words "any other person".

[164] Some delegations suggested the replacement of the word "abuse" with the words "misuse" or "improper use".

[165] One delegation suggested the insertion of the words "or entity" after the words "any other person".

[166] Some delegations suggested deletion of the last part of this sentence. Other delegations advocated its retention, as it contained an important element of the provision.

[167] This provision is based on article 12 of the Criminal Law Convention, with considerable changes. Criminalization, which deals both with trading in active influence and trading in passive influence, is deliberately confined to actions committed against or for an administration or a public authority of the State Party. At the present stage, trading in influence (active and passive) for a foreign public authority has not been taken into account.

Option 2[168]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence trading in influence, which shall be understood as:

(a) Any act by a public official performed by that person personally or through a third party with a view to assisting or procuring the illicit negotiation or conclusion of public administration transactions inconsistent with the responsibilities inherent in his or her public office; and

(b) Any act by any person designed to bring about the illicit conduct of a public official or serving to assist or procure the conduct referred to in subparagraph (a) of this article.

Option 3[169]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the improper use by a public official, for his or her own benefit or for that of a third party, of influence derived from the discharge of office or performance of functions with a view to obtaining an advantage from another public official in a matter with which the latter is dealing or has to deal.

Option 4[170]

Each State Party shall take the necessary legislative and other administrative measures in order to criminalize, in accordance with basic principles of its domestic law the promising, giving or offering, when committed intentionally, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert improper influence over the decision-making of any person, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

Option 5[171]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, directly or indirectly offering, giving or promising any undue advantage to any person who declares or confirms that he or she can exercise some influence on decisions or actions of persons occupying positions in the public or private sector, whether the undue advantage is for himself or herself or for another person; also soliciting or receiving an offer or a promise in exchange for such influence.

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[168] Revised text submitted by Mexico at the first session of the Ad Hoc Committee (A/AC.261/L.39).

[169] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[170] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

[171] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

Article 22
Misappropriation of property by a public official

Option 1[172]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the misappropriation or removal of any movable or immovable property, public or private funds or securities or any other object entrusted to a public official by virtue of his or her position or mission.

Option 2[173]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper use by a public official or a person who performs public functions, for his or her own benefit or for that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of or in the performance of his or her functions.

Option 3[174]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the exploitation, misuse, misappropriation, diversion and embezzlement or fraudulent or negligent loss of state property by public officials or individuals.

Article 23
Concealment[175]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the concealment, [retention,][176] possession or transmission of movable property or funds or the serving as an intermediary in the transmission [or retention] of such

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[172] Text taken from the proposal submitted by France (A/AC.261/IPM/10). During the first reading of the draft text at the first session of the Ad Hoc Committee, most delegations expressed their preference for this option to become the basis for further work and for combining the concepts contained in article 27. In particular, the need for clarifications in terminology were highlighted. One delegation expressed misgivings with the inclusion of such an article, but indicated that if there was consensus for inclusion, this option could form the basis for further work, with the insertion of a clause indicating that the criminalization should be in accordance with basic principles of domestic law. Other delegations indicated that option 2 contained many useful elements that should be incorporated into the final formulation.

[173] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[174] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[175] Text taken from the proposal submitted by France (A/AC.261/IPM/10). Colombia withdrew its previous option 2 of this article. During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations were of the view that this article should be deleted, as the matter was covered by or the concept should be treated in conjunction with article 33. Other delegations were of the view that the concept expressed in this article was fundamentally different from money-laundering and there was need to have a separate article in the convention.

[176] Pakistan withdrew its previous option 3 of this article, on condition that the word "retention" be added in this draft text.

property or funds, when the person involved is aware that such movable property or funds are the result of one of the offences established in accordance with this Convention.[177]

Article 24
Abuse of functions[178, 179]

Option 1[180]

Each State Party shall adopt such legislative and other measures as may be necessary to establish [in accordance with basic principles of its domestic law] as criminal offences the abuse of his or her functions or any act or omission in the discharge of those functions by a public official, international civil servant or a person who performs public functions, for the purpose of obtaining illicit benefits for himself or herself or for a third party.

Option 2[181]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

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[177] Some delegations proposed the deletion of the last part of this sentence concerning awareness. Other delegations advocated its retention, as it formed a constituent part of the concept. Pakistan indicated that the withdrawal of option 3 of this article (A/AC.261/3 (Part II)) was conditional on the deletion of this phrase and that, in view of its retention in the text, it would like for option 3 to remain for consideration by the Ad Hoc Committee at the second reading of the draft text. The proposal by Pakistan read as follows:

"Each State Party shall adopt such legislative and other measures as may be necessary to establish the following as criminal offences:

"(a) Purchasing immovable property from the proceeds of corruption and continuing to retain it under any name;

"(b) Maintaining bank accounts, investments and any other form of property that attempts to hide the proceeds of corruption and continuing to retain it under any name."

[178] At the first session of the Ad Hoc Committee, Malaysia proposed that this article read as follows (A/AC.261/L.42):

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with basic principles of its domestic law, the use by a public official of his or her office or position for corruption when he or she takes any decision or action in relation to any matter in which such official or any relative or associate has an interest, whether direct or indirect, in order to obtain an undue advantage."

[179] During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations expressed doubt about the advisability or feasibility of including this article in the draft convention. Others were of the view that the draft convention should include an article criminalizing this type of conduct. However, several delegations indicated that for this to succeed careful consideration and formulation would be necessary. The concept existed in several legal systems, but further consideration was necessary to determine whether it commanded sufficient common understanding at the international level, which would be a requisite for inclusion in the draft convention. Several delegations suggested amending the title to read "Abuse of authority", "Abuse of power", "Abuse of trust" or "Abuse of position".

[180] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text at the first session of the Ad Hoc Committee, Turkey indicated that it considered option 1 sufficient and withdrew its previous option 3 of this article, on condition that the clause of criminalization in accordance with basic principles of domestic law be included.

[181] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

(a) The issuance of a decision, resolution, ruling or judgement by a public official, in manifest violation of the law, and the failure or refusal to perform, or delay in performing, an act incumbent upon an official by virtue of his or her functions;

(b) The abuse of office or functions by a public official through the performance of public functions other than those incumbent upon him or her by law.

Article 25
Unlawful enrichment[182, 183, 184]

Option 1[185]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the illicit enrichment or the increase in the assets of a public official that significantly exceeds his or her legitimate income during the performance of his or her functions and that he or she cannot reasonably justify.

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[182] During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations indicated that they faced serious difficulties, often of a constitutional nature, with the inclusion of the concept of the reversal of the burden of proof. Some delegations expressed understanding for the desire to include the concept in the array of measures against corruption, but, in view of the difficulties related to the reversal of the burden of proof in criminal law, suggested that the article be modified, made less binding and moved to the chapter on preventive measures in order to allow States to adopt administrative measures embodying the concept contained in the article. Another possible solution offered was to base such an article on the comparable article of the Inter-American Convention against Corruption of the Organization of American States (see E/1996/99). Many other delegations wished to retain this article in this chapter, in view of the potential efficiency of criminal measures in this area. One delegation clarified that the concept reflected in this article actually referred to the rules on evaluation of evidence and not necessarily to the shifting of the burden of proof, proof being the result of evidence and evidence being the medium of proof. The Vice-Chairman with responsibility for this chapter encouraged delegations to conduct informal consultations in order to find appropriate and acceptable solutions to this problem.

[183] At the first session of the Ad Hoc Committee, South Africa proposed that this article read as follows (A/AC.261/L.43):

"*Unexplained wealth*

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the increase in wealth of a public official that significantly exceeds his or her present or past legitimate income, unless he or she gives a satisfactory explanation as to how such wealth was acquired."

[184] At the first session of the Ad Hoc Committee, Malaysia proposed that this article read as follows (A/AC.261/L.44):

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal office, in accordance with basic principles of its domestic law, the illicit enrichment or unjustified increase in the assets of a public official that is manifestly out of proportion to his or her legitimate income during his or her tenure as a public official that he or she cannot reasonably justify."

[185] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

Option 2[186]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the unjustified increase in the wealth of a public official during his or her service with the State or within two years following separation from such service.

2. Subject to their constitutions and fundamental principles of their domestic law, States Parties that have not yet done so shall adopt such measures as may be necessary to establish as criminal offences transnational bribery and illicit enrichment, which shall be considered acts of corruption for the purposes of this Convention.

Option 3[187]

Each State Party shall adopt all legal and administrative measures necessary in its domestic legislation to regard as illicit enrichment, and thereby to criminalize, any significant increase in the assets and income of any public official that is not in conformity with his or her legitimate earnings derived from his or her duties and that has no other reasonable explanation as to its source.

Option 4[188]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Systematic or methodical illicit enrichment of a public official of unlawful financial proceeds obtained through a series or combination of corrupt acts as defined in articles [...] of this Convention, penalties for which may vary according to the gravity of the offence, and as may be determined by the participating States;

(b) Failure of a public officer to explain the acquisition, during his or her incumbency, of an amount of property that is manifestly out of proportion to his or her salary as a public official and his or her other lawful sources of income, in which case such property shall be presumed to have been acquired unlawfully.[189]

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[186] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

[187] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

[188] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

[189] At the first session of the Ad Hoc Committee, Pakistan proposed that the criminalization of illicit enrichment be made optional, thus providing a way out for those States Parties that would consider its provisions to be in contradiction with their domestic law. Furthermore, in order to address any ambiguity that might arise for the use of the term "assets beyond means" in the existing text, Pakistan suggested that the application of the article be qualified by setting a minimum threshold for assets below which the article would not be applicable, with the determination of such threshold left to the discretion of States Parties. Pakistan also pointed out that the existing formulation of article 25 was restrictive because it did not cover cases where illicit enrichment, although a result of acts performed during the holding of office, might take place after retirement.

Article 26
Use of classified or confidential information[190]

Option 1[191]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the improper[192] use by a public official or a person who performs public functions,[193] for his or her own benefit or for that of a third party, of any kind of classified or confidential information that that official or person who performs public functions has obtained because of or in the performance of his or her functions.

Option 2[194]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

(a) The improper disclosure by a public official of confidential information or documents and the use for his or her own benefit or for that of a third party of a scientific discovery or other classified or confidential information or data of which he or she has become aware by virtue of his or her functions;

(b) The improper use, for his or her own benefit or for that of a third party, by a public official who is an employee or executive or a member of a board or governing body of any public institution of information not intended for public knowledge that he or she has obtained by virtue of or in connection with his or her functions during his or her service as a public official or within two years following separation from such service.

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[190] During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations expressed their wish to retain the concept contained in this article in the draft convention. Many of them, however, expressed their preference for reflecting that concept in a revised version of article 29 and not in a separate article. Some delegations were of the view that there was no need for the establishment of a separate offence on the issue. According to those delegations, other articles (such as article 22 (Misappropriation of property by a public official)) and other national penal laws would be sufficient to cover the conduct targeted in this article.

[191] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text at the first session of the Ad Hoc Committee, some delegations expressed preference for this option as the basis for further work, expressing the view that some elements of option 2, such as the identification of a period of time after separation from service, could be usefully incorporated into a subsequent revised formulation.

[192] Several delegations were of the view that a more appropriate word was needed.

[193] One delegation proposed amending this phrase to read "or any other person, as defined in article 3 of this Convention".

[194] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

Article 27
Diversion of property[195]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or for that of a third party, of any movable or immovable property, monies or securities belonging to the State or to an individual, that such official has received by virtue of his or her position for purposes of administration or custody or for other reasons.[196]

Article 28
Improper benefits[197, 198]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence the soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.

[*Article 29*
Other criminal offences[199]

Option 1[200]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:

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[195] During the first reading of the draft text at the first session of the Ad Hoc Committee, this article was considered together with article 22. It was suggested that an effort should be made to combine this article with that article. Option 2 of this article, which had been submitted by Colombia (A/AC.261/IPM/14), was deleted, as it was identical to option 3 of article 22.

[196] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[197] At the first session of the Ad Hoc Committee, Colombia and the Philippines withdrew previous options 2 and 3, respectively.

[198] During the first reading of the draft text at the first session of the Ad Hoc Committee, it was pointed out that the title was not appropriate to reflect the offence proposed to be established by this article. While most countries were familiar with the offence, it was pointed out that in recent evolution and subsequent revisions of criminal laws the concept was considered to be covered by other offences. As a result, some delegations questioned the need to have a separate article on this subject. The Vice-Chairman with responsibility for this chapter suggested that if the Ad Hoc Committee decided to retain this article, the formulation could be improved through consultations.

[199] At the first session of the Ad Hoc Committee, most delegations proposed the deletion of this article, as all matters it contained had been covered elsewhere. Some delegations were of the opinion that some of the conduct in this article did not merit criminalization. Other delegations suggested that the Ad Hoc Committee defer its decision on this matter until the completion of the consideration of the articles on criminalization of the convention. The Vice-Chairman with responsibility for this chapter encouraged the authors of the various options to consult with each other in order to produce a single text, eliminating duplication with other articles, and thus to facilitate the work of the Ad Hoc Committee.

[200] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

(a) The violation of disqualification and conflict-of-interest rules for state recruitment as laid down in the internal employment regulations of the State Party;

(b) The holding of an interest by a public official, to his or her own advantage or to that of a third party, in any type of contract or transaction in which the official is called upon to act by virtue of his or her position or functions;

(c) The failure by a public official to report to the competent authority facts of which he or she has become aware and which he or she is officially responsible for investigating;

(d) Unlawful judicial representation, action or advice in a judicial or administrative matter undertaken by a public official;

(e) The use by a public official who exercises jurisdiction or civil or political authority or holds an executive administrative position or position in a judicial body of the authority or power conferred by public office or functions in favour of or against the electoral chances of a political candidate, party or movement;

(f) The action taken by a public official of facilitating the escape of a detainee or prisoner entrusted to his or her surveillance, custody or conveyance.

Option 2[201]

Each State Party shall take the necessary legislative and other administrative measures to criminalize the following actions, in accordance with basic principles of its domestic law:

(a) Consciously acting as a mediator for the promising, offering, giving, requesting or accepting of the unlawful benefit listed in articles [...] [articles on criminalization] of this Convention;

(b) Providing benefit to oneself or others in public works by deceiving a person through tricks and intrigue, or causing harm to that person or to others;

(c) Providing a credit that shall not be assigned by banks and other financing institutions or stopping a loan that needs to be assigned or to attempt such behaviour consciously.

[*Subparagraph (d) was deleted.*]

Option 3[202]

The following shall be considered corrupt acts subject to sanctions provided for in the domestic legislation of each State Party:

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[201] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

[202] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24). At the first session of the Ad Hoc Committee, the Philippines stated that it had submitted its proposal under the title "Other prohibited acts". The Philippines also revised this option.

(a) Non-disclosure: failure of a public official, either wilfully or through gross negligence, to disclose accurately on an annual basis his or her assets, liabilities and net worth in order to defraud the Government of obligations such as taxes and/or to deceive the proper authorities of his or her unlawful activities and proceeds;

(b) Non-divestment: failure of a public official to divest applicable assets to avoid conflicts of interest to a person or persons other than his or her spouse or relatives within the fourth civil degree of consanguinity or affinity.]

Article 30[203]
Equivalence of sanctions

1. The attempted commission or complicity in the commission of the offence referred to in article [...] [Criminalization of corruption of public officials] of this Convention shall constitute an offence of the same degree, whether an attempt or complicity is involved in the bribing of a public official of a State Party.[204]

2. Each State Party shall establish custodial sanctions for acts of corruption established in accordance with this article, which shall take account of the seriousness of such acts.[205]

3. When the commission of any of the offences referred to in articles [...] [articles on criminalization] of this Convention requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.[206]

Article 31[207]
Enhancement of sanctions

1. Each State Party shall adopt all legislative and administrative measures necessary in order to make possible more severe punishment and to apply effective methods against corruption whenever the crimes listed in articles [...] [articles on criminalization] of this Convention are committed in an organized manner.[208]

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[203] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13). During the first reading of the draft text at the first session of the Ad Hoc Committee, many delegations expressed understanding of and support for the concept of equivalence of sanctions. However, most delegations suggested that this article could be merged into articles 20 (Complicity, instigation or attempt) and 40 (Prosecution, adjudication and sanctions).

[204] Many delegations suggested a reformulation of this paragraph drawing on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development.

[205] Many delegations suggested deletion of this paragraph.

[206] Some delegations proposed deletion of this paragraph. However, others proposed that this paragraph be reformulated along the lines of paragraph 2 (f) of article 6 of the Organized Crime Convention.

[207] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22). During the first reading of the draft text at the first session of the Ad Hoc Committee, Turkey amended its proposal. Also at the first reading, it was suggested that the concept of paragraph 1 should be merged into article 40.

[208] Some delegations proposed to replace the words "in an organized manner" with the words "by an organized criminal group".

2. Each State Party, in accordance with its domestic law, shall adopt all the legislative and administrative measures necessary to prosecute and punish persons who take part in the commitment of the crimes covered by this Convention and to extend the application of the relevant provisions of this Convention to such persons, irrespective of the status of a public official, whenever the economic activities or transactions involved include or result in the use of public resources or produce results that affect the public or aim at the provision of public services.[209]

Article 32[210]

Criminalization of corruption in the private sector[211]

Option 1[212]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of business activity:[213]

(a) The promising, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting, in breach of his or her duties;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works for, in any capacity, a private sector entity, for the person himself or herself or for another person or entity, in order that he or she act or refrain from acting, in breach of his or her duties.

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[209] During the first reading of the draft text at the first session of the Ad Hoc Committee, Turkey indicated its intention to consider withdrawing this paragraph after completion of the discussion on article 32.

[210] During the first reading of the draft text at the first session of the Ad Hoc Committee, most delegations indicated that the Convention would be incomplete without a provision addressing private sector corruption and advocated inclusion of this article, as it addressed a crucial matter of special relevance in the era of globalization, with ramifications for an increasing number of spheres of economic and social activity. All those in favour of inclusion expressed their preference for option 1, enhanced however with some elements from option 2, such as the concept of harm. Some delegations expressed serious misgivings about the feasibility of efforts to introduce an international obligation for criminalization in this area. While recognizing the importance of the issue of private sector corruption, those delegations expressed concern about the potential of a provision such as this to interfere with normal economic activity through the application of criminal law. Some delegations suggested that efforts to arrive at common ground might be based on the introduction of the concept of protection of the public interest. In any event, further deliberations were deemed necessary on the concept of private sector corruption, as well as on the meaning of the term "private sector" and the shifting relationships between the private and the public sectors. It was also pointed out that this discussion would be related to the discussion on the definition of the term "public official".

[211] During the first reading of the draft text at the first session of the Ad Hoc Committee, one delegation suggested that the title should read "Criminalization of corruption by the private sector".

[212] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4). At the first session of the Ad Hoc Committee, the authors revised their proposal and indicated that this article should be placed after article 19 bis, while paragraph 2 should be considered in conjunction with the article on complicity.

[213] Pakistan proposed the addition of the words "that affects public interest".

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with paragraph 1 of this article.

Option 2[214]

Each State Party shall take such measures as may be appropriate to deter and combat corruption in the private sector. To that end, each State Party shall, inter alia, establish as criminal offences the following conduct:

(a) The solicitation or acceptance by any natural person who works or provides services in entities of the private sector, directly or indirectly, of an undue advantage, for himself or herself or for another person, in order that such person act or refrain from acting in the exercise of his or her obligations in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector; and

(b) The intentional promise, offering or giving to a natural person who works or provides services in entities of the private sector, directly or indirectly, of any article of monetary value or other undue advantage, for himself or herself or for another person or entity, as a gift, favour, promise or advantage, in exchange for which that person performs or fails to perform any act in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector.

Article 33

Criminalization of money-laundering of proceeds of corruption

Option 1[215]

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and such intention may reasonably be deduced from the circumstances:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

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[214] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

[215] Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), France (A/AC.261/IPM/10) and Pakistan (A/AC.261/IPM/23).

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

3. For purposes of implementing or applying paragraph 1 of this article, each State Party shall include as predicate offences all offences established in accordance with this Convention.[216]

Option 2[217]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(c) The concealment or disguise of the true nature, source, location, disposition, movement, destination or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, authorizing and counselling the commission of any of the offences established in accordance with this article;

(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article [...] [Criminalization of corruption] of this Convention;

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[216] With regard to the criminalization of money-laundering, France proposed the wholesale incorporation of all the relevant provisions of article 6 of the Organized Crime Convention. France was of the view that the proposal submitted by Austria and the Netherlands could therefore be supplemented by the inclusion of the provisions of article 6, paragraph 2, of that instrument.

[217] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

(b) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(c) For the purposes of paragraph 1 of this article, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; and

(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

Option 3[218]

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

[218] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

(b) Each State Party shall include as predicate offences all offences set forth in this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with corruption;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Option 4[219]

Each State Party shall adopt all legislative and administrative measures necessary to criminalize the laundering of all kinds of proceeds derived from the crimes set forth in articles [...] [articles on criminalization] of this Convention.

Option 5[220]

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

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[219] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

[220] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all serious crime as defined in article [...] [Use of terms] of this Convention and the offences established in accordance with article [...] [Acts of corruption] of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with corrupt practices;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of the State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Option 6[221]

Each State Party shall adopt such legislative and other measures as may be necessary to establish the following as criminal offences:

(a) Purchasing the immovable property from the proceeds of corruption and continuing to retain it under any name;

(b) Maintaining the bank accounts, investments and any other form of property in an attempt to hide the proceeds of corruption and continuing to retain them under any name.

[221] Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

Article 34[222]
Account offences

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Creating or using an invoice or any other accounting document or record containing false or incomplete information;

(b) Unlawfully omitting to make a record of a payment.

Article 35[223]
Traffic in influence by a private person

Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence any act or omission by any person who, personally or through a third party or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for himself or herself or for another person any benefit or gain.

Article 36
Measures against corruption

Option 1[224]

Each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

Option 2[225]

1. Each State Party shall, to the extent appropriate and in accordance with its domestic law, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials, in addition to the measures set forth in article [...] [Measures against money-laundering] of this Convention.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

Option 3[226]

1. Each State Party, in accordance with its domestic law, may opt to cancel, rescind, recall or set aside any contract, arrangement or benefit awarded or given in direct consequence of an act of corruption.

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222 Text taken from the proposal submitted by France (A/AC.261/IPM/10).
223 Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).
224 Text taken from the proposal submitted by France (A/AC.261/IPM/10).
225 Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).
226 Text taken from the proposal submitted by Pakistan (A/AC.261/IPM/23).

2. Nothing in this article shall prevent any private party from pressing claims against natural or legal persons who are found to have committed acts of corruption.

Article 37[227]
Criminalization of obstruction of justice

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.

2. Nothing in this article shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 38
Liability of legal persons

Option 1[228]

1. Each State Party shall take such measures as may be necessary, in accordance with fundamental principles of its domestic law, to establish the liability of legal persons for participation in the crimes set forth in articles [...] [articles on criminalization] of this Convention.

2. In accordance with the fundamental principles of the domestic law of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

[227] Text taken from the proposals submitted by Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

[228] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

Option 2[229]

1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to establish the liability of a legal person situated in its territory or constituted in accordance with its legislation, when a person liable for its conduct or control commits, in such capacity, an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

2. The liability referred to in the preceding paragraph shall be incurred without prejudice to the criminal liability of the natural persons who allegedly committed the offences.

3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with paragraph 1 of this article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.

Option 3[230]

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Option 4[231]

Each State Party shall take the penal, legislative or administrative measures necessary in compliance with principles of its domestic law, concerning legal persons, in the event that they contribute to the commitment of crimes set forth in article [...] [Criminalization of corruption] of this Convention.

Option 5[232]

1. Each State Party shall adopt measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes such as plunder and for the other offences established in accordance with articles [...] [articles on criminalization] of this Convention.

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[229] Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).
[230] Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).
[231] Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).
[232] Text taken from the proposal submitted by the Philippines (A/AC.261/IPM/24).

2. Subject to the legal principles of the State Party, the liability of the legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural or juridical persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions.

5. Each State Party shall take the necessary measures to allow heads and other responsible officials of businesses who have knowledge of or consented to the crime or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud.

Article 39[233]
Specialized authorities

Each State Party shall take such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption. They shall have the necessary independence, in accordance with fundamental principles of the domestic law of the State Party, to be able to carry out their functions effectively and free from any undue pressure. Each State Party shall ensure that the staff of such entities has adequate training and financial resources to carry out their tasks.

[*Articles 40-75 were not taken up.*]

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[233] Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).